



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/638,650	08/14/2000	Michael J. Cuttler	4590-004	9848

26158 7590 06/03/2004

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
P.O. BOX 7037
ATLANTA, GA 30357-0037

EXAMINER

BLECK, CAROLYN M

ART UNIT	PAPER NUMBER
----------	--------------

3626

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/638,650

Applicant(s)

CUTTLER ET AL.

Examiner

Carolyn M Bleck

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-15,17,25-31 and 47-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-15,17,25-31 and 47-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Notice to Applicant

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 March 2004 has been entered.
2. This communication is in response to the RCE filed 16 March 2004. Claims 1, 2, 6-15, 17, 25-31, and 47-72 are pending.

Declaration under 35 U.S.C. 132

3. At pages 24-29 of the amendment filed 16 March 2004, Applicant argues that secondary consideration of non-obviousness favor patentability of the claims pending within the present application. In particular, Applicant relies on two declarations, namely the Declaration of Ellen B. Cuttler and the Declaration of James E. Seiber, filed under 37 C.F.R. 1.132 as evidence of commercial success and unexpected results.

In response, although the Examiner agrees that the courts have made it clear that secondary considerations, such as commercial success or unexpected results, may be relied upon to establish the non-obviousness of an invention, as indicated by the case law cited by Applicant, the Examiner respectfully submits that the evidence

submitted by Applicant in the form of the declarations filed under 37 C.F.R. 1.132 fail to meet the criteria established under MPEP sections 716.03 through 716.03(b) and 716.02(c-e), for at least the following reasons:

(I) The declarations fail to establish a clear nexus between the alleged commercial success and the invention as claimed. The evidence is not commensurate in scope with the scope of the claims. *In re Tiffin*, 448 F.2d 791, 171 USPQ 294 (1971). In particular, there is nothing that directly ties the statements given in paragraphs 3-12 of the declaration of James E. Seiber nor the statements given in paragraph 3 of the declaration of Ellen Cutler with the language specifically recited in the instant claims. Applicant's statements at paragraphs 3-12 of the declaration of James E. Seiber do not appear to correlate to the claimed invention, namely claims 1, 15, and 52, in that the nexus between the elements in the claims and the product ONLINE PHQ is not clearly established. For example, Affiant James Seiber refers to "an internet-based questionnaire that is used to acquire life history information from employment applicants" (paragraph 5) and the ONLINE PHQ product "electronically locks the answers to the stem question, so that the applicant is unable to change the response to the stem question after the branch question is revealed" (paragraph 12). However, nowhere in claims 1, 15, and 52 is there a specific recitation of "an internet-based questionnaire that is used to acquire life history information from employment applicants" or "electronically locking the answers to the stem question, so that the applicant is unable to change the response to the stem question after the branch

Art Unit: 3626

question is revealed". As such, it is noted that the specific features upon which the Affiant (and Applicant) relies as the reasons for commercial success are not recited in the instant claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, the courts have held that affidavits or declarations showing commercial success as secondary considerations of non-obviousness to the invention "described and claimed" or other equivalent indefinite language have little or no evidentiary value. *In re Troutman*, 1960 C.D. 308, 126 USPQ 56, 47 CCPA 308. In addition, statements which amount to an affirmation that the claimed subject matter functions as it was intended to function is not relevant to the issue of non-obviousness and provides no objective evidence thereof. See MPEP § 716.

As such, there is no clear and definite nexus between the statements averred by James Seiber and Applicant's claims. Similar analysis holds for the statements made by Affiant Ellen Cuttler.

(II) In order to establish commercial success, the evidence must establish that the alleged commercial success is directly derived from the invention claimed, in a marketplace where the consumer is free to choose on the basis of objective principles, and that such success is not the result of heavy promotion or advertising, shift in advertising, consumption by purchasers normally tied to Applicant or assignee, or other business events extraneous to the merits of the claimed invention. *In re Magneli et al.*,

Art Unit: 3626

176 USPQ 305 (CCPA 1973); *In re Noznick et al.*, 178 USPQ 43 (CCPA 1973). Thus, commercial interest can be construed as commercial success only if that interest generated is evidenced to stem from the commercial success directly derived from the invention claimed.

In the present case, the Examiner agrees that based on the declaration of Ellen B. Cuttler, namely paragraphs 4-8, that customers bought the ONLINE PHQ product. The declaration states that the sales in units represents the number of employment applicants providing life history information via the ONLINE PHQ product. However, it is not clear to the Examiner, based on the Table in paragraph 5, who the customers were that purchased the ONLINE PHQ product. The evidence presented does not rule out the possibility that the marketplace was such that consumption was by purchasers normally tied to Applicant or assignee, and, as such, is insufficient to establish Applicant's allegations that such commercial interest stems from the commercial success directly derived from the invention claimed.

(III) The declaration of James Seiber fails to establish evidence of unexpected results. The evidence of unexpected properties may be in the form of a direct or indirect comparison of the claimed invention with the closest prior art which is commensurate in scope with the claims. See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) and MPEP § 716.02(d) - § 716.02(e).

Firstly, James Seiber refers to the ONLINE PHQ product (paragraph 7) as unexpectedly resulting in applicants for employment providing significantly more truthful,

Art Unit: 3626

and complete life history information. However, there is no clear nexus between the claimed invention and the ONLINE PHQ as recited in the declaration.

Secondly, an affidavit or declaration under 37 CFR 1.132 must compare the claimed subject matter with the closest prior art to be effective to rebut a prima facie case of obviousness. *In re Burckel*, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979). "A comparison of the claimed invention with the disclosure of each cited reference to determine the number of claim limitations in common with each reference, bearing in mind the relative importance of particular limitations, will usually yield the closest single prior art reference." *In re Merchant*, 575 F.2d 865, 868, 197 USPQ 785, 787 (CCPA 1978) (emphasis in original). Where the comparison is not identical with the reference disclosure, deviations therefrom should be explained, *In re Finley*, 174 F.2d 130, 81 USPQ 383 (CCPA 1949), and if not explained should be noted and evaluated, and if significant, explanation should be required. *In re Armstrong*, 280 F.2d 132, 126 USPQ 281 (CCPA 1960) (deviations from example were inconsequential). See MPEP 716.02(e). However, the declaration of James Seiber does not compare the prior art of record with the claimed subject matter.

Thus, the declaration of James Seiber does not establish evidence of unexpected results.

It is noted that the declaration of James Seiber discusses polygraph examinations no longer being necessary because of the increased veracity of the life history information obtained via the ONLINE PHQ product. It is unclear to the Examiner how these statements regarding the polygraph are relevant to the discussion of

Art Unit: 3626

evidence of unexpected results. Whether or not a polygraph test was needed in conjunction with the ONLINE PHQ product does not relate to the invention as claimed.

(B) The declarations of Shelley W. Spielberg, PHD, and Paul M. Muchinsky, PHD, are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 6-13, 15, 17, 25-31, 47-50, 52-65, and 67-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. (6,618,734) in view of Peters et al. (5,893,098) and Sarchione et al. (Sarchione, Charles D., Michael J. Cuttler, Paul M. Muchinsky, and Rosemary O. Nelson-Gray, "Prediction of Dysfunctional Job Behaviors Among Law Enforcement Officers", *Journal of Applied Psychology*, Vol. 83, No. 6, pp. 904-912, 1998).

(A) As per claim 1, Williams discloses an internet based interactive method for obtaining information through a Behavioral Assessment Interview (BAI) to reduce biased questions comprising (Fig. 1-2, col. 1 lines 5-20, col. 2 lines 19-34, col. 7 line 51 to col. 8 line 10):

(a) administering to a candidate customized/validated assessment questions during a BAI, the questions relating to cooperation, customer service orientation, dependability, and ability to handle work demands, wherein specific questions are branched if the result of the question is a negative response or delayed response (Fig. 1, 5-6, col. 3 lines 1-10, col. 5 line 56 to col. 6 line 6, col. 10 lines 48-58);

(b) capturing from the candidate answers to the BAI questions and storing information in a database (col. 2 lines 34-40, col. 5 line 47 to col. 6 line 5, col. 6 lines 14-67);

(c) measuring the candidate's response to each question along with the response time in answering the question, and then based on inappropriate response or response time, triggering the system to branch and ask additional questions (Fig. 1, 5-6, col. 3 lines 1-10, col. 5 line 56 to col. 6 line 6, col. 10 lines 48-58);

(d) triggering the system to branch and ask additional questions and capturing from the candidate responses to the triggered questions and storing information in a database (Fig. 1, 5-6, col. 2 lines 34-40, col. 3 lines 1-10, col. 5 line 47 to col. 6 line 5, col. 6 lines 14-67, col. 10 lines 48-58); and

(e) wherein the responses to the questions are used to determine a predictor score, obtained during the interview process, which corresponds to subsequent job performance, and wherein the scores and scoring algorithm allow the system to reduce the applicant pool based on interview scores not considered to be optimal (Fig. 6, col. 2 lines 42-62, col. 4 lines 6-23, col. 6 lines 11-40).

Williams fails to expressly disclose storing the responses in a computer database and does not expressly recite presenting stem questions and then revealing branch questions based on the stem questions. However, branching is discussed by Williams as is disclosed above.

Peters includes obtaining and collating information from a plurality of computer users by asking questions using a survey, wherein the information obtained is added and stored in a database, wherein the survey document includes branched to questions linked to another question or questions such that the branched-to question or questions will only be required to be answered by a respondent user if the respondent user gives a predetermined answer(s) to the question or series of questions to which the branched-to question is linked, wherein the survey document is present to the respondent user as a plurality of screens (where there are a plurality of questions), each screen asking one question and where the screen presenting a branched-to question will not be presented by the display to the remote user unless, he makes one or more predetermined answers to a previous question or questions (col. 1 lines 10-16, col. 3 line 47 to col. 6 line 44, and col. 115 lines 1-23).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include the aforementioned components of Peters within the method of Williams with the motivation of reducing the amount of time to answer a survey by displaying only questions which are relevant to the user (Peters; col. 6 lines 19-27), reducing the amount of information received from a user (Peters; col. 1 lines 39-

Art Unit: 3626

49), and reducing the amount of time and increasing the accuracy in the process of reducing an applicant pool (Williams; col. 1 lines 29-40, col. 4 lines 5-18).

Williams fails to expressly disclose including questions related to life history information, wherein the life history information comprises more than one life event. In addition, Williams does not expressly recite the responses being relevant to predicting a predefined negative outcome for the applicant. However, Williams clearly discloses the responses to questions being used to determine a predictor score, obtained during the interview process, which corresponds to subsequent job performance, and wherein the scores and scoring algorithm allow the system to reduce the applicant pool based on interview scores not considered to be optimal (Fig. 6, col. 2 lines 42-62, col. 4 lines 6-23, col. 6 lines 11-40).

Sarchione includes using personality and life history information to predict dysfunctional job behavior (reads on "predefined negative outcome") in the law enforcement occupation, wherein the dysfunctional job behaviors encompass a wide variety of undesirable actions such as absence, theft, and drug use, sexual misconduct, insubordination, and inappropriate verbal conduct toward the public (reads on "predefined negative outcome"), wherein the life history information was obtained from personal history questionnaires, a structured interview, and/or a background investigation report and including information related to work history, criminal history, and drug use history (reads on "life history information comprises more than one life event"), and wherein life history indices were predictive of job behavior as individuals who engaged in behaviors such as marijuana use, military court martial, and conviction

Art Unit: 3626

for driving under the influence of alcohol (reads on “negative indicator” and “critical item”) had a much higher probability of subsequent disciplinary problems (reads on “predefined negative outcome”) as law enforcement officers than their counterparts who did not engage in such behaviors (page 905 col. 1 par. 2 and col. 2 par. 1-2; page 906 col. 1 par. 1 and col. 2 par. 2-4; Table 1 page 907; page 910 col. 1 all; page 911 col. 1 all).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include the aforementioned components of Sarchione within the method taught collectively by Williams and Peters with the motivation of reducing the amount of time and increasing the accuracy in the process of reducing an applicant pool (Williams; col. 1 lines 29-40, col. 4 lines 5-18) and of accurately forecasting dysfunctional job behaviors which have high public visibility and produce high organization scrutiny – such as that of law enforcement officers, therefore reducing the occurrences of these behaviors and reducing public outrage and rebuke (Sarchione; page 905, col. 2, second full paragraph).

(B) Claim 2 repeats the same limitations as claim 1, and is therefore rejected for the same reasons given above in claim 1, and incorporated herein.

(C) As per claims 6 and 8-9, Sarchione includes deriving classes of dysfunctional job behaviors (reads on “negative outcome”) and using the classes to predict the probability of subsequent disciplinary problems (reads on “predefined outcome”) as a law

enforcement officers than counterparts who did not engage in such behaviors (page 905 col. 1 par. 2 and col. 2 par. 1-2; page 906 col. 1 par. 1 and col. 2 par. 2-4; Table 1 page 907; page 910 col. 1 all; page 911 col. 1 all), wherein the classes include absence (reads on "performance deficiency"), theft, drug use, sexual misconduct, insubordination, inappropriate verbal conduct toward the public, disciplinary problems (reads on "objective") (page 905 col. 2 par 1-2; page 906 col. 1 par. 3 and col. 2 par. 1-2). The motivation for combining Sarchione within Williams and Peters is given above in the rejection of claim 1, and incorporated herein.

(D) As per claim 7, Williams, Peters, and Sarchione fail to expressly disclose the outcome including failure to complete training. However, it is respectfully submitted that when evaluating an applicant for a job, an employer typically takes into consideration whether or not an applicant would be able to complete the required training based on the applicant's background, and the skilled artisan would have found it an obvious modification to include an outcome of failure to complete training within the method taught collectively by Williams, Peters, and Sarchione with the motivation of reducing the amount of time and increasing the accuracy in the process of reducing an applicant pool (Williams; col. 1 lines 29-40, col. 4 lines 5-18) and increasing job retention and decreasing training costs by ensuring people remain with the employer reducing the need to train new employees.

Art Unit: 3626

(E) As per claim 10, Peters includes allowing a user to input text in response to a question or a branched to question (reads on "stem question") (col. 4 lines 20-25 and col. 6 lines 51-57). As per the recitation of "descriptive information," it is noted that Peter's ability to enter textual information is considered to be a form of "descriptive information." The motivation being to allow complicated text answers to be entered by a user (Peters; col. 6 lines 51-57).

(F) Claims 11-13 repeat the same limitations as claim 1, and are therefore rejected for the same reasons given for claim 1, and incorporated herein.

(G) Claim 67 repeats the same limitations as claim 1, and is therefore rejected for the same reasons given for claim 1, and incorporated herein.

(H) As per claim 68, Williams discloses the following validation processes:

(a) content-oriented validity evaluation is based on job analysis data gathered in the interview development process. The interview questions are correlated to task statements described in the job description. This allows the content of the interview to correlate to the aspects of the position.

(b) criterion-related validity evaluation is based on concurrent validity and predictive validity. Concurrent validity involves the use of a scoring algorithm for the client/employer's interview created before administration to applicants. The system contains empirical data of the correlation between interview scores and job

Art Unit: 3626

performance. The job performance data is provided by immediate supervisors through performance evaluations configured to assess those dimensions measured in the interview. The scoring algorithm allows the system to reduce the applicant pool based on interview scores not considered to be optimal (reads on "empirically related to a predefined negative outcome.") The discussion of Sarchione above regarding "critical item" in the rejection of claim 1 is incorporated herein.

(c) an item analysis will be conducted to determine the Internal Consistency Reliability Coefficient (alpha). This will identify interview questions, which must be modified or eliminated in order to improve the overall quality of the interview prior to administration. (col. 2 lines 41-50, col. 4 lines 5-19, col. 9 lines 24-50).

(H) Claims 15, 17, 25, 28-31, 48-50, and 69-70 repeat the subject matter of method claims 1-2, 6-9, 10-13, and 67-68, respectively, as a computer readable medium comprised of software for instructing a computer rather than as a series of steps. As the underlying processes of claims 1-2, 6-9, 10-13, and 67-68 have been shown to be fully disclosed by the collective teachings of Williams, Peters, and Sarchione in the above rejections of claims 1-2, 6-9, 10-13, and 67-68, it is readily apparent that the Internet based platform (Williams; col. 6 lines 14-28) disclosed collectively by Williams, Peters, and Sarchione includes the software to perform these steps. As such, these limitations are rejected for the same reasons given above for method claims 1-2, 6-9, 10-13, and 67-68, and incorporated herein.

(I) As per claims 26-27, Sarchione includes deriving classes of dysfunctional job behaviors (reads on “negative outcome”) and using the classes to predict the probability of subsequent disciplinary problems (reads on “predefined outcome”) as a law enforcement officers than counterparts who did not engage in such behaviors (page 905 col. 1 par. 2 and col. 2 par. 1-2; page 906 col. 1 par. 1 and col. 2 par. 2-4; Table 1 page 907; page 910 col. 1 all; page 911 col. 1 all), wherein the classes include absence (reads on “performance deficiency”), theft, drug use, sexual misconduct, insubordination, inappropriate verbal conduct toward the public, disciplinary problems (reads on “objective”) (page 905 col. 2 par 1-2; page 906 col. 1 par. 3 and col. 2 par. 1-2). The motivation for combining Sarchione within Williams is given above in the rejection of claims 1 and 15, and incorporated herein.

(J) System claim 52 differs from method claim 1 by recited apparatus elements, namely a user interface and computer processor, rather than a series of steps. As per these elements, Williams discloses an Internet based platform including computer input (col. 6 lines 18-40).

The remainder of claim 52 repeats the same limitations as claim 1, and is therefore rejected for the same reasons given for claim 1, and incorporated herein.

(K) Claims 53-54, 57-65, and 71-72 repeat the same limitations as claims 1-2, 6-9, 10-13, and 67-68 and are therefore rejected for the same reasons given for those claims, and incorporated herein.

(L) Claims 55-56 repeat the same limitations as claims 26-27, and are therefore rejected for the same reasons given for those claims, and incorporated herein.

6. Claims 14, 51, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. (6,618,734), Peters et al. (5,893,098), and Sarchione et al. (Sarchione, Charles D., Michael J. Cuttler, Paul M. Muchinsky, and Rosemary O. Nelson-Gray, "Prediction of Dysfunctional Job Behaviors Among Law Enforcement Officers", *Journal of Applied Psychology*, Vol. 83, No. 6, pp. 904-912, 1998) as applied to claims 1, 15, and 52, and further in view of Golden (3,628,255).

(A) As per claims 14, 51, and 66, the relevant teachings of Williams, Peters, and Sarchione, and the motivation for their combination is as discussed in the rejections above, and incorporated herein.

Williams, Peters, and Sarchione fail to expressly disclose "wherein the stem question response cannot be altered by the applicant after completion of the question collection."

Golden discloses an applicant depressing a score button, and once the answer is selected, the selected answer cannot be changed (col. 3 line 64 to col. 4 line 22).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the aforementioned features of Golden within the

method and system taught collectively by Williams, Peters, and Sarchione with the motivation of preventing tampering with responses to survey questions.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 11-13, 14-15, 48-50, 51-52, and 63-66 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied prior art teaches an automated sales and services system (5,576,951), a system and method for optimizing a program containing a number of the flows through flow branches (6,102,970), an automatic business and financial transaction processing system (6,289,319), system and method for the management of candidate recruiting information (6,385,620), method for developing and administering tests over a network (6,431,875), systems and methods for making jury selection determinations (6,607,389), system and method for providing an automated interview (US 2002/0029159), Getting to know you (Hammer), White Collar Criminality (Collins), HRM (Terpstra), integrity testing as part of hiring process (Physician Manager), selecting safe employees (Kamp), and development and evaluation of a construct-oriented biodata measure for predicting positive and negative contextual performance (Solomonson).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (703) 305-3981. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (703) 305-9588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 306-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

10. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Art Unit: 3626

Or faxed to:

(703) 872-9306 or (703) 872-9326 [Official communications]

(703) 872-9327 [After Final communications labeled "Box AF"]

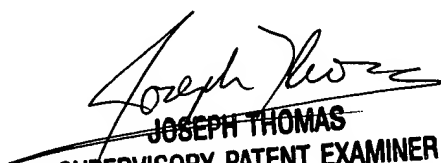
(703) 746-8374 [Informal/ Draft communications, labeled
"PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,
Arlington, VA, 7th Floor (Receptionist).

CB

CB

May 28, 2004


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600